

1
2
3 **II. JURISDICTION AND VENUE**

4 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
5 that such actions may be brought and heard before “any appropriate United States district court
6 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
7 jurisdiction of all civil actions arising under the laws of the United States.

8 3. Defendant conducts business and has an office in the State of New Jersey and
9 therefore, personal jurisdiction is established.

10 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

11 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

12
13
14 **III. PARTIES**

15 6. Plaintiff is an adult individual who resides in Westville, New Jersey.

16 7. Plaintiff is a “consumer” as defined in 15 U.S.C. § 1692(a)(3), as she is a natural
17 person allegedly obligated to pay a debt.

18 8. Defendant, United Recovery Systems, LP is a corporation with its registered
19 address at 5800 N. Course Drive, Houston, Texas 77072.

20 9. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6)
21 trying to collect a “debt” as defined by 15 U.S.C. §1692(a)(5).

22 10. Defendant acted through their agents, employees, officers, members, directors,
23 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
24
25
26
27
28

IV. BACKGROUND ON THE FDCPA

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute which prohibits a catalog of activities in connection with the collection of debts by third parties. *See* 15 U.S.C. §1692 et seq. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. §1692(k). The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692(d). Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692(e). And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692(f). Simply, designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, the FDCPA broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements, in connection with the collection of a debt.

13. In enacting the FDCPA, the United States Congress found that “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by

1 many debt collectors,” which “contribute to the number of personal bankruptcies, to marital
2 instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692(a).
3 Congress additionally found existing laws and procedures for redressing debt collection injuries
4 to be inadequate to protect consumers. 15 U.S.C. § 1692(b).
5

6 14. Congress enacted the FDCPA to regulate the collection of consumer debts by
7 debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
8 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
9 collection practices are not competitively disadvantaged, and to promote consistent State action
10 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e).
11

12
13 **V. FACTUAL ALLEGATIONS**

14 15. At all pertinent times hereto, Defendant was hired to collect a consumer debt
15 allegedly owed by Plaintiff.
16

17 16. The alleged debt at issue arose out of transactions, which were primarily for
18 personal, family, or household purposes

19 17. Plaintiff has received collection communications from Defendant at least
20 through December 6, 2010 (see letter from Defendant attached as Exhibit “A”).
21

22 18. Defendant constantly and continuously places collection calls to Plaintiff
23 seeking and demanding payment for an alleged debt owed (see call log attached as Exhibit “B”)

24 19. Defendant placed three collection calls to Plaintiff on December 6, 2010 (see
25 call log attached as Exhibit “B”).
26

27 20. Defendant placed three collection calls to Plaintiff on December 8, 2010 (see
28 call log attached as Exhibit “B”).

1 21. Defendant placed three collection calls to Plaintiff on December 9, 2010 (see
2 call log attached as Exhibit "B").

3 22. Plaintiff received voicemail messages from Defendant's telephone number 856-
4 873-5237 on November 5, 7, 9, 10, 12, 15, and 18, 2010.

5 23. Defendant first contacted Plaintiff by telephone on November 5, 2010.

6 24. Plaintiff spoke with a representative named Tony Di Giovanni on November 5,
7 2010.

8 25. During this conversation, Defendant's representative, Tony Di Giovanni
9 demanded to know what items were purchased on the original credit card.

10 26. Defendant's representative, Tony Di Giovanni, refused to accept Plaintiff's
11 payment offer of \$20.00 and instead demanded that she pay the full amount due.

12 27. Defendant's representative, Tony Di Giovanni, asked Plaintiff where she worked.
13 When Plaintiff refused to respond, Defendant's representative, Tony Di Giovanni, said he would
14 find out from her Social Security number.

15 28. Defendant's representative, Tony Di Giovanni, stated that he would get the
16 money due on the account from Plaintiff's family members.

17 29. Despite having Plaintiff's correct contact information, Defendant contacted
18 Plaintiff's neighbor, Maltilda Moore, on November 5, 2010 and identified itself as a debt
19 collector.

20 30. Defendant falsely stated to Plaintiff's neighbor, Maltilda Moore, that Plaintiff
21 was refusing to take its calls.

22 31. Defendant's representative, Tony Di Giovanni, again contacted Plaintiff by
23 telephone on November 18, 2010.

34. Defendant's representative, John Beauchamp, stated that he had personal information to disclose to Plaintiff and proceeded to ask Plaintiff a series of invasive questions.

36. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

Complaint - 6

COUNT I
VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT

c) Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

1 d) Defendant violated §1692d(5) of the FDCPA by causing a telephone to
2 ring repeatedly and continuously with the intent to annoy, abuse and harass Plaintiff.

3 e) Defendant violated §1692e of the FDCPA by using false, deceptive and
4 misleading representations in connection with the collection of an alleged debt.
5

6 f) Defendant violated §1692e(10) by using a deceptive means in an attempt
7 to collect a debt by threatening that if immediate payment is not made Plaintiff will never again
8 be able to obtain credit.

9 g) Defendant violated §1692e(10) by using a deceptive means in an attempt
10 to collect a debt by communicating with a third party in connection with Plaintiff's alleged debt
11 and by stating that Defendant is calling from a debt collection company.
12

13 h) Defendant acted in an otherwise deceptive, unfair and unconscionable
14 manner and failing to comply with the FDCPA.
15

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully prays that judgment be entered against the
19 Defendant for the following:

- 20 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
21 1692k(a)(1);
22
23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
24 15 U.S.C. § 1692k(a)(2)(A);
25
26 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
27 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
28
d. Any other relief deemed appropriate by this Honorable Court.

VIII. DEMAND FOR A JURY TRIAL

1 Plaintiff demands a trial by jury as to all issues triable.
2

3 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**
4

5 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not
6 subject to any other action pending in any court, arbitration or administrative proceeding.
7

8 Respectfully submitted,

9 Date: 03/11/11

By: /s/ Amy L. Bennecoff (AB0891)
10 AMY L. BENNECOFF
11 Attorney for Plaintiff
12 Kimmel & Silverman, P.C.
13 1930 East Marlton Pike, Suite Q29
14 Cherry Hill, New Jersey 08003
15 Telephone: 856-429-8334
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28